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4 ATTORNEY FOR PLAINTIFF:  
5 ELIZABETH SANTOS

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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11  
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13 ELIZABETH SANTOS

14 Plaintiff,

15 v.

16 MERRITT COLLEGE;  
SHIRLEY MACK, an individual;  
17 and DOES 1-10, inclusive,

18 Defendant,  
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Case No: HG07335828

NEK  
**FIRST AMENDED  
COMPLAINT FOR DAMAGES BASED  
UPON:**

1. FAILURE TO PREVENT,  
INVESTIGATE AND REMEDY  
HARASSMENT (FEHA) AND IN  
VIOLATION OF 42 USC §1981.19
2. INTENTIONAL INFILCTION OF  
EMOTIONAL DISTRESS
3. BREACH OF IMPLIED-IN-FACT  
CONTRACT AGAINST  
DEFENDANT MERRITT  
COLLEGE
4. UNLAWFUL DISCRIMINATION  
BASED UPON RACE AND AGE  
AGAINST DEFENDANTS  
MERRITT COLLEGE AND  
SHIRLEY MACK
5. NEGLIGENT  
MISREPRESENTATION  
AGAINST MERRITT COLLEGE

1 ELIZABETH SANTOS complains and alleges as follows:

2 **FACTS COMMON TO ALL CAUSES OF ACTION**

3 1. Defendant MERRITT COLLEGE (hereinafter referred to as MERRITT COLLEGE)  
 4 is a California Institution doing business in the city of Oakland, State of California, County of  
 5 Alameda, located at 12500 Campus Drive, Oakland, California 94606.

6 2. Defendant SHIRLEY MACK (hereinafter referred to as MACK) is a Librarian of  
 7 Defendant MERRITT COLLEGE, and in that capacity during all times alleged herein was  
 8 actively involved in the business affairs of MERRITT COLLEGE. At all times herein  
 9 mentioned, Defendant MACK was a resident of the State of California.

10 3. The true names and capacities of Defendants names herein as DOES 1-10, inclusive,  
 11 whether individual, corporate, associate, or otherwise, are unknown to Plaintiff who therefore  
 12 sues such Defendants by such fictitious names pursuant to California Code of Civil Procedure,  
 13 §474. Plaintiff is informed and believes that DOES Defendants are California residents.  
 14 Plaintiff will amend this complaint to show true names and capacities when they have been  
 15 determined.

16 4. In or about 2005, Plaintiff and Defendant MERRITT COLLEGE entered into an  
 17 academic agreement wherein, among other things, Plaintiff was a student. The academic  
 18 agreement further provided for a student to have access to the Library, in which a student would  
 19 be allowed to use computers, provided by MERRITT COLLEGE within the Library, for  
 20 educational purposes, including, but not limited to "communicating with Processors."

21 5. During the course of attendance at Defendant MERRITT COLLEGE, Plaintiff  
 22 attended classes, and regular student privileges from Defendant MERRITT COLLEGE, all in  
 23 recognition to her academic agreement with Defendant MERRITT COLLEGE as a student.

24 6. On or about October 5, 2005, Plaintiff suffered from a non-school related family  
 25 emergency in where she was informed her father, who was hospitalized, was diagnosed

1 terminally ill and had less than one month to live. Due to this emergency, Plaintiff needed to  
 2 contact a Professor to communicate the situation to him. This event became one of many in  
 3 where Plaintiff needed to communicate with one or more of her Professors.

4       7. On or about September 28, 2005, Plaintiff was emailing one of her Professors in the  
 5 Library of Defendant MERRITT COLLEGE, regarding a midterm. As Plaintiff was emailing her  
 6 Professor, the Defendant MACK , who at the time Plaintiff did not have any knowledge of,  
 7 came up behind Plaintiff and told her to get up and exit. Defendant MACK said to Plaintiff,  
 8 something to the effect of, "your using the computer for personal use." Plaintiff responded with  
 9 something to the effect that "I am communicating with my Professor," Plaintiff then showed  
 10 Defendant MACK the email, however Plaintiff was still forced to leave. Plaintiff felt  
 11 uncomfortable and was humiliated in front of other younger students. After this incident,  
 12 Plaintiff complained to the President of Defendant MERRITT COLLEGE. To Plaintiff's  
 13 knowledge, no action was taken.

14       8. On or about October 5, 2005, Plaintiff was once again emailing one of her Professors,  
 15 informing her that Plaintiff's father was hospitalized and diagnosed terminally ill, and Plaintiff  
 16 would be missing a class for the first time. At this time, Defendant MACK approached Plaintiff  
 17 and told her to get up and exit, while once again accusing Plaintiff of using the computer for  
 18 personal use. Plaintiff once again complied with Defendant MACK's demands and accusations  
 19 and exited the library.

20       9. All Plaintiff's Professors informed students that communication outside of class  
 21 should be through email, due to the fact that classes met once a week. Any problems or anything  
 22 students did not understand about the class or assignments or pertinent to class attendance or  
 23 missed classes was to be communicated through email.

24       10. On or about November 2, 2005, at approximately 3:00pm Plaintiff entered the  
 25 Library and went directly to the computer to print out an assignment for a group project. Plaintiff  
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1 was at the computer for less than five minutes when Defendant MACK approached Plaintiff from  
2 behind and asked Plaintiff to "get up from the computer and exit the Library," in a harsh tone.  
3 Plaintiff then explained to Defendant MACK why she was using the computer, and showed her  
4 the list of Professors who Plaintiff corresponds with, however Defendant MACK did not  
5 consider it an educational purpose. Defendant MACK repeatedly pointed to a sign that said  
6 something to the effect of "do not use for personal use," and repeatedly asked Plaintiff if she  
7 understood what the sign said. Out of embarrassment and frustration, Plaintiff left the Library.

8       11. On many occasions, Plaintiff observed students using the Library computers for  
9 what she understood to be personal use, however they were not, on any occasion, observed by  
10 Plaintiff to be approached by Defendant MACK. However, Plaintiff was restricted from using  
11 the computers for educational purposes.

12       12. Plaintiff was unable to follow through with assignments given by a student who was  
13 the class leader, through email because Plaintiff did not have a personal computer or printer, and  
14 was unable to use the Library computers, because Defendant MACK would not allow Plaintiff to  
15 use them. The longest Plaintiff had been permitted to stay in the Library to use the computer was  
16 less than ten minutes, which is an inadequate amount of time to research and print findings, and  
17 respond to her classmates' and/or Professors' emails, including, but not limited to, for group  
18 projects, class assignments and/or homework assignments.

19       13. On or about November 2005, Plaintiff was enrolled in eight classes, which totaled 24  
20 units. Plaintiff did not buy books for her classes, because it was too expensive. Therefore  
21 Plaintiff needed the Library and the computers in the Library as her resources. If Plaintiff was  
22 unable to use the computers in the Library, she would have to walk approximately one quarter  
23 mile to the Learning Center and then walk back to the library to use the Reference Books.  
24 However this was not an economical way to study and complete assignments for Plaintiff,  
25 because she would have to go back and forth from the computers in the Learning Center, and the

1 resource books in the Library, using and missing valuable study time.

2       14. Plaintiff did not have any excess time for matters other than school and her dying  
3 father, as Defendant MACK had on many occasions accused her of. As a student Plaintiff's time  
4 was precious and every opportunity to study and complete assignments was taken advantage of.

5       15. On or about November 6, 2005, a class leader for Plaintiff's weekend class informed  
6 Plaintiff that she would be emailing her sixteen pages of information regarding a class project.  
7 Plaintiff responded with something to the effect of, "I will print it out in the Library on Monday,"  
8 however Plaintiff was too embarrassed to use the computer after the last incident with Defendant  
9 MACK, in where Defendant MACK asked Plaintiff to leave in a loud and embarrassing tone in  
10 front of other younger students because she the plaintiff, allegedly was using the computer for  
11 personal use.

12       16. On or about November 8, 2005, Plaintiff was in the Library studying for two quizzes  
13 in her "Legal Aspects" class, when Defendant MACK approached Plaintiff and told her to, "be  
14 quiet," although Plaintiff was not talking. As the person across the couch from Plaintiff  
15 continued to talk, Defendant MACK once again approached Plaintiff and said "quiet!"  
16 Embarrassed, Plaintiff decided to leave the couch and use the computer to email her Professor  
17 regarding a form he was to send her.

18       17. Approximately two to five minutes after Plaintiff sat down at the computer,  
19 Defendant MACK approached Plaintiff and said something to the effect of, "get up! get up!  
20 exit!" Plaintiff responded with something to the effect of, "enough, enough!" Plaintiff then got  
21 up from the computer and stated something to the effect of, "I am not leaving, and I will continue  
22 what I am doing, because I am not violating any rules. I am reading an email sent to me by my  
23 Professor's office secretary." Plaintiff then showed Defendant MACK the email she was  
24 reading, however Defendant MACK refused to acknowledge Plaintiff was using the computer for  
25 an educational purpose.

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28 FIRST AMENDED COMPLAINT FOR DAMAGES

1       18. Plaintiff was a forty-seven year old woman, who was fully aware of the rules of the  
2 Library, and did not have excess time to spend using the computer for personal reasons, with a  
3 class load of 24 units. She was unfairly singled out and harassed by Defendant MACK.

4       19. On more than one occasion, Defendant MACK ordered Plaintiff to repeat the phrase  
5 "do not use for personal use, and do communicate with professors," in increments of three,  
6 humiliating and embarrassing the Plaintiff in front of other students and a Librarian Tech.

7       20. After several occasions of being embarrassed and singled out, Plaintiff no longer  
8 entered the Library if Defendant MACK was there. On the rare occasions Plaintiff entered the  
9 Library and Defendant MACK was there, Plaintiff made sure other Librarians or the Dean of the  
10 Library were present, because Defendant MACK did not harass or single out Plaintiff when other  
11 peers and/or superiors were present.

12       21. Eventually, Plaintiff stopped going to the Library as often, due to the harassment  
13 endured by Plaintiff from Defendant MACK. Plaintiff started to go to the Learning Center for  
14 other services, and would then go to the Main Library to use references books. During this time  
15 Defendant MACK did not confront Plaintiff, due to the fact that the Dean of the Library, Mr.  
16 Cordova, was in the Library in the evenings and Defendant MACK did not confront Plaintiff if  
17 any authority figures were present.

18       22. On or about October 9, 2006, Plaintiff and a classmate were studying at a table for a  
19 "Anatomy and Physiology" class. Plaintiff and her classmate were whispering to each other and  
20 taking notes. Other students in the area were talking loudly while making copies at a nearby copy  
21 machine, and a student was playing games on a computer, while another was chatting on Yahoo  
22 Messenger. Defendant MACK approached Plaintiff and told Plaintiff something to the effect of,  
23 "Be quiet! Go upstairs and get a room." Plaintiff felt singled out and embarrassed, because there  
24 were many students in the same area of the Library that were speaking loudly and Defendant  
25 MACK did not approach them.

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1       23. On multiple occasions Defendant MACK told Plaintiff to go to the Learning Center  
2 to use the computers for personal use. This would cause a great inconvenience for Plaintiff,  
3 because all the reference books Plaintiff needed for her classes were in the Library, and due to the  
4 fact that Plaintiff was not using the computer for personal use.

5       24. After many occasions of being harassed, wrongly accused, and embarrassed by  
6 Defendant MACK, Plaintiff began to study in her car, only to enter the Library to utilize the  
7 restroom. Library employees who noticed Plaintiff stopped using the Library, would approach  
8 her when she entered to use the restroom, and would tell Plaintiff when Defendant MACK was  
9 not going to be in the Library so Plaintiff could have access to the computers and Reference  
10 Books.

11       25. After each and every incident in where Defendant MACK harassed, wrongly  
12 accused, and embarrassed Plaintiff, Plaintiff complained to Mr. Cordova, Dean of the Library.

13       26. After the second incident, Plaintiff was also told by Judy Singer, a Librarian and  
14 Noreen, a Library Tech, to complain to Pamela Price, an individual who does payroll, who would  
15 then pass the information up the chain of command. Plaintiff complained to Pamela Price after  
16 every incident in where Defendant MACK harassed, wrongly accused, and embarrassed Plaintiff.  
17 Ms. Price then passed the information on.

18       27. On many occasions Plaintiff complained to her Professors about the harassment by  
19 Defendant MACK and on occasions Plaintiff's Professors wrote emails in support of Plaintiff's  
20 use of the Library computers, in addition to bringing the issue to the attention of the Dean of Real  
21 Estate, Mr. Lee.

22       28. In or about the beginning of May 2005, Plaintiff then complained to Karen Ulrich,  
23 Director of Employee Relations, who briefly talked to Plaintiff, and rescheduled another meeting.  
24 Karen Ulrich later cancelled that appointment and did not reschedule. Ms. Ulrich wrote in a  
25 letter dated January 22, 2007 that an investigation would be conducted by Mark Paschal, a  
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1 Peralta Community College District EEO investigation consultant. However no further action  
 2 was taken, and the harassment and false accusations toward Plaintiff, by Defendant MACK  
 3 continued. Plaintiff also filed a written complaint with Merritt College in compliance with the  
 4 Government Code, and several written complaints with different departments and Librarians.  
 5 The said complaint was answered both by telephone calls to Plaintiff, cancelled meeting and by  
 6 letters dated January 22, 2007 and April 24, 2007. Letters are attached hereto and marked as  
 7 Exhibit B. Therefore Plaintiff filed this lawsuit to preserve her rights.

8 **FIRST CAUSE OF ACTION:**

9 **FAILURE TO PREVENT, INVESTIGATE, AND REMEDY HARASSMENT IN**  
**VIOULATION OF FEHA (CALIFORNIA GOVERNMENT CODE §12940(k))**  
 10 (Against Merritt College, and in violation of 42 USC §1981.19 against Shirley Mack and  
 DOES 1 through 10, inclusive)

11 29. Plaintiff repeats and realleges paragraphs 1 through 28 above and incorporates them  
 12 herein by reference as though set forth in full.

13 30. At all times mentioned herein, the California Fair Employment and Housing Act  
 14 (FEHA) was in full force and effect, and Defendant, and each of them, were and are subject to  
 15 FEHA's requirements, as well as 42 USC §1981.19.

16 31. Plaintiff, while emailing her Professors on the computers in the Peralta College  
 17 library, which are available to all students, was continuously subjected to racial discrimination  
 18 and harassment from Defendant SHIRLEY MACK as well as an unwelcome remarks and  
 19 inappropriate tone toward Plaintiff. Such conduct violates FEHA and 42 USC. §1981.19.

20 32. The discrimination, harassment, unwelcome remarks, and inappropriate tone were  
 21 objectively offensive to reasonable students in Plaintiff's circumstances and Plaintiff herself  
 22 found the conduct offensive.

23 33. All Defendants were aware of the discriminatory and hostile environment to which  
 24 Plaintiff was subjected, as well as the fact that she found it offensive and unwelcome, because  
 25 she complained of the discrimination and harassment. Additionally, the perpetrator of the

1 discrimination and harassment was a librarian at MERRITT COLLEGE and therefore her  
 2 knowledge of her own discriminatory, unlawful, inappropriate, offensive and unwelcome  
 3 conduct is imputed to his employers. Moreover, the discriminatory environment was well known  
 4 to students and employees.

5       34. Under FEHA Defendants were required to take all responsible steps necessary to  
 6 prevent discrimination and harassment but failed to do so.

7       35. Moreover, under FEHA, MERRITT COLLEGE was required to take prompt  
 8 corrective action to address the harassing behavior but failed to do so. Instead, Plaintiff was  
 9 subjected to continued harassment in violation of California Government Code §§12940(j)(1)  
 10 and (k) and 42 USC. §1981.19. Defendant MERRITT COLLEGE knew of the ongoing  
 11 harassment, yet failed to do whatever was necessary to end the harassment, make the Plaintiff  
 12 whole by restoring lost student benefits or opportunities, and prevent the misconduct from  
 13 reoccurring. Instead, Defendants took no action. Defendants failed to take appropriate  
 14 disciplinary action against the harasser intended to stop the harassment. Defendants failed to  
 15 advise the Plaintiff of the discipline imposed on the harasser. Defendants failed to insure that no  
 16 further harassment or retaliation against the Plaintiff would occur.

17       36. Plaintiff has exhausted her administrative remedies by filing a complaint with the  
 18 FEHA on January 17, 2007 and was issued a RIGHT TO SUE letter on January 22, 2007.  
 19 Attached hereto and marked as Exhibit A is Plaintiff's Right to Sue letter.

20       37. As a proximate results of Defendants' conduct, Plaintiff has suffered loss in her right  
 21 to use the school library to email her Professors, as she does not have a personal computer  
 22 available to her. Plaintiff is also unable to use the library to study, as Defendant MACK asks  
 23 Plaintiff to leave.

24       38. As a further proximate result of Defendants' discriminatory conduct, Plaintiff has  
 25 suffered depression, loss of self-esteem, illness and emotional distress, all to Defendants' damage

1 in an amount unknown at this time, but according to proof at trial.

2       39. Defendants committed to acts alleged herein maliciously, fraudulently, and,  
3       oppressively, in bad faith, with the wrongful intention of injuring Plaintiff, from an improper and  
4       evil motive amounting to malice, and/or in conscious disregard of Plaintiff's rights. Thus,  
5       Plaintiff is entitled to an award of exemplary damages against Defendant Merritt College and  
6       punitive damages against Defendant Shirley Mack and DOES 1-10.

**SECOND CAUSE OF ACTION:**  
**INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**  
[Against Shirley Mack and DOES 1 through 10, Inclusive]

40. Plaintiff realleges and incorporates paragraphs 1 through 28 above as though set forth herein.

41. Defendants' conduct, as thoroughly alleged above, was and is extreme and outrageous conduct amounting to intentional infliction of emotional distress, which was intended to and/or was done in conscious disregard of the probability of causing Plaintiff to suffer severe emotional distress in violation of 42 USC §1981.19.

42. Defendants' outrageous conduct includes harassment, inducement of stress, and thus intentional infliction of emotional distress

43. By the actions described herein, Defendants intentionally and with conscious disregard, attempted to strip Plaintiff of her dignity and reputation among her peers and throughout the institution.

44. As a proximate result of Defendants' aforementioned wrongful conduct, Plaintiff has suffered and continues to suffer grave emotional distress, including embarrassment, humiliation, and anguish, all to Plaintiff's damage in an amount unknown at this time, but according to proof at the time of trial.

45. Defendants' conduct was willful, wanton, malicious, and with reckless disregard for the rights of Plaintiff so as to justify an award of exemplary and punitive damages.

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2                   **THIRD CAUSE OF ACTION:**  
3                   BREACH OF IMPLIED-IN-FACT CONTRACT  
4                   AGAINST DEFENDANT MERRITT COLLEGE  
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6         46. Plaintiff realleges and incorporates paragraphs 1 through 28 above as though set  
7         forth herein.

8         6         47. Plaintiff entered into an academic relationship with Defendant MERRITT  
9         COLLEGE in or about 2005 as heretofore alleged pursuant to which she agreed to study for  
10       which Defendant MERRITT COLLEGE agreed to furnish Plaintiff the necessary academic  
11       environment. During the entire course of Plaintiff's academic pursuit with Defendants, there  
12       existed an implied-in-fact academic contract between Plaintiff and Defendant MERRITT  
13       COLLEGE, which at the time of Plaintiff's injuries included, but was not limited to, the  
14       following terms and conditions:

15       (a) Plaintiff would be able to continue her academic relationship with Defendants  
16       indefinitely so long as she carried out her academic duties in a proper and competent manner;

17       (b) Plaintiff would not be harassed or impeded in her pursuit of studying and the use of  
18       facilities would not be barred unless for good cause;

19       (c) Defendants would not evaluate Plaintiff's student activities and bar her from utilizing  
20       facilities;

21       (d) Defendants would provide Plaintiff with support so that she could properly carry out  
22       her academic responsibilities.

23       27       47. This academic agreement was evidenced by having a student identification card,  
24       paying the necessary fees for registration of classes, and other documents that evidenced an  
25       academic relationship; oral representations to Plaintiff by Defendants' agents and employees, and  
26       the parties' entire course of conduct, including the following:

27       28       (a) Defendant MERRITT COLLEGE's written and oral personnel policies and discipline

1 procedures;

2       (b) Defendant MERRITT COLLEGE's established policy which was known to Plaintiff,  
 3 and relied upon her, that a student such as Plaintiff, who had performed her student functions as a  
 4 good and faithful student, would have a secure academic environment tenure with Defendant;  
 5 that a student such as Plaintiff would be permitted to continue her academic pursuit unimpaired  
 6 by harassment and mental distress unless failing to meet the standards of Defendant MERRITT  
 7 COLLEGE for good and sufficient cause; and that a student such as Plaintiff would not be  
 8 disciplined or impeded in her academic pursuit without good and sufficient cause;

9       (c) Again and again during her academic relationship Plaintiff was told by her  
 10 Professors, orally and in writing, that she was doing a satisfactory or better job. As a result of the  
 11 above representation, Plaintiff reasonably came to expect to rely on the promise of an academic  
 12 environment free of harassment and mental distress. Such statements and acts communicated to  
 13 Plaintiff the idea that she had performed her student responsibilities and that her academic  
 14 relationship with Defendant MERRITT COLLEGE was secure. Plaintiff in good faith relied  
 15 upon these representations and believed them to be true;

16       (d) Plaintiff's reliance on, belief in, and acceptance in good faith of all the assurances,  
 17 promises and representations as listed in Paragraph 43 lead Plaintiff throughout her academic  
 18 relationship with Defendants to reasonably believe that her academic relationship was secure and  
 19 that thereby existed a contract of a continuous academic environment with Defendants free of  
 20 harassment and mental distress, with Defendants. As independent consideration for this contract  
 21 of a continuing academic relationship, and as evidence of Plaintiff's reliance thereon, Plaintiff  
 22 refrained from seeking any other academic environments.

23       48. Plaintiff undertook and continued her academic relationship with the expectation to  
 24 be free from harassment, discrimination based on race and age, and free from being singled out  
 25 as a mature woman in an environment of primarily students under twenty-five years old and duly  
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1 performed all of the conditions of the contract to be performed by her. Plaintiff in the past has  
 2 been ready, willing and able to perform, and has offered to perform, all of the conditions of the  
 3 contract to be performed by her, however in the last two years, due to stress created by  
 4 Defendants in Plaintiff's academic pursuit, she was unable to complete courses that she would  
 5 have normally succeeded in.

6       49. Despite the representation made to Plaintiff by Defendants and the reliance she  
 7 placed upon them, Defendant MERRITT COLLEGE failed to carry out its responsibilities under  
 8 the terms of the academic agreement in the following ways:

9             (a) By subjecting Plaintiff to arbitrary, unfair, and dishonest criticism.

10       50. As a proximate result of Defendant MERRITT COLLEGE's breach of the academic  
 11 agreement, Plaintiff has suffered and continues to suffer substantial losses in academic  
 12 opportunities, and other academic benefit which she would have received had Defendants not  
 13 breached said agreement, all to her damage in an amount according to proof. Furthermore,  
 14 Plaintiff registered for classes for the 2007 school year, but was unable to follow through with  
 15 attending the classes, due to emotional and mental distress caused by Defendants.

16       WHEREFORE, Plaintiff requests relief as hereinafter provided.

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**FORTH CAUSE OF ACTION:**  
**(UNLAWFUL DISCRIMINATION BASED UPON RACE AND AGE**  
**IN VIOLATION OF 42 USC §1981.19**  
**AGAINST ALL DEFENDANTS AND DOES 1-10 INCLUSIVE)**

20       51. Plaintiff hereby incorporates by reference paragraphs 1 through 28 of this complaint  
 21 as if set forth herein.

22       52. At all times herein mentioned, Government Codes were in full force and effect and  
 23 was binding upon Defendants, and each of them. Said sanctions require Defendants to refrain  
 24 from discriminating against any student on the basis of race and age, among other things. Within  
 25 the time provided by law, Plaintiff made a complaint to the California Department of Fair  
 26

1 Employment and Housing ("DFEH"). Plaintiff has now received her right-to-sue letter from the  
 2 DFEH, a copy of which is attached hereto as Exhibit A and incorporated by reference herein.

3       53. Defendants MERRITT COLLEGE, and DOES 1-10 inclusive, failed to supervise  
 4 Defendant MACK in the Library where she performed her duties, and failed to properly  
 5 investigate the actions of Defendant MACK. Defendant MACK, continued harassment and  
 6 mental anguish and provided an environment of stress for Plaintiff.

7       54. Plaintiff is informed and believes that in addition to the practices enumerated in this  
 8 cause of action, Defendant MERRITT COLLEGE has engaged in other discriminatory practices  
 9 which are not fully known by Plaintiff.

10       55. As a direct, foreseeable, and proximate result of Defendants' discriminatory acts,  
 11 Plaintiff has suffered and continues to suffer substantial losses in education and educational  
 12 benefits, and has suffered and continues to suffer humiliation, embarrassment, mental and  
 13 emotional distress, and discomfort, all to her damage in an amount in excess of the minimum  
 14 jurisdiction of this court, the precise amount of which will be proven at trial.

15       56. Defendants committed the acts herein alleged maliciously, fraudulently, and  
 16 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and  
 17 evil motive amounting to malice, and in conscious disregard of Plaintiff's rights. Because the  
 18 acts taken towards Plaintiff were carried out by managerial employees acting in a despicable,  
 19 cold, callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to  
 20 recover punitive damages from Defendants in an amount according to proof.

21       57. As a result of Defendants' discriminatory acts as alleged herein, Plaintiff has no  
 22 plain, adequate or complete remedy at law and Defendants continue to engage in said alleged  
 23 wrongful practices. Therefore, Plaintiff requests:

24               (a) That she be made whole and afforded all benefits attendant thereto that would  
 25 have been afforded Plaintiff but for said discriminatory; and

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(b) That Defendants, their agents, successors, employees and those acting in concert with them be enjoined permanently from engaging in each of the unlawful practices, policies, usages and customs set forth herein.

WHEREFORE, Plaintiff prays for judgement as hereinafter set forth.

**FIFTH CAUSE OF ACTION:  
(NEGLIGENT MISREPRESENTATION AGAINST  
DEFENDANTS MERRITT COLLEGE AND DOES 1-10)**

58. Plaintiff hereby incorporates by reference Paragraphs 1 through 28 and 41 through 45, inclusive, of this complaint as if fully set forth herein.

59. During the course of Plaintiff's academic relationship with Defendant MERRITT COLLEGE, and each of them, misrepresented to Plaintiff:

(a) That she would have an academic environment free of stress, harassment and mental anguish;

60. Defendants, and each of them, when they made their representations of fact to the Plaintiff, which are described in the preceding paragraph, had no reasonable grounds for believing the representations were true, and Defendants, and each of them, made their representations with the intent to induce Plaintiff to take the actions herein alleged. Defendants' representations were made with the intent that Plaintiff rely upon them, and Plaintiff did reasonably rely upon them to her detriment.

61. In making such representations of fact, and in suppressing and failing to disclose facts material to Plaintiff's employment relationship as described in Paragraphs 56 and 57 above, Defendants negligently misled the Plaintiff about her prospects for educational stability. Defendants, and each of them, knew or reasonably should have known that Plaintiff would rely upon the Defendants' representations and Defendants' failure to disclose facts material to her academic relationship. Plaintiff did rely on the Defendants' misrepresentations and failure to disclose material facts to her detriment.

1       62. As a direct, foreseeable, and proximate result of Defendants' negligent  
2 misrepresentations, Plaintiff has suffered and continues to suffer substantial losses in earnings  
3 and other academic benefits, and Plaintiff has suffered and continues to suffer pain, discomfort,  
4 and anxiety, humiliation and emotional distress, and will continue to suffer said emotional  
5 distress in the future in an amount according to proof.

6 WHEREFORE, Plaintiff prays for judgement against the Defendants, and each of  
7 them, as follows:

- 8                 (1) For compensatory damages including lost student benefits, mental and emotional  
9 distress, and other special and general damages according to proof;

10                 (2) For an award of punitive damages on the Fifth Cause of Action on Shirley Mack and  
11 DOES 1-10, where allowed by law;

12                 (3) For an award of interest, including prejudgement interest, at the legal rate, where  
13 allowed by law;

14                 (4) For an award to Plaintiff of costs of suit incurred herein on all causes of action;

15                 (5) For an award to Plaintiff of Attorneys' fees on the First and Fourth Causes of  
16 Actions pursuant to Government Code §12900, et seq and 42 USC. §1981.19, where allowed by  
17 law.

18                 (6) For a permanent injunction enjoining Defendants, their agents, successors and  
19 employees and those acting in concert with them for engaging in each of the unlawful practices,  
20 policies, usages and customs set forth in the First and Fourth Causes of Actions, where allowed  
21 by law.

22                 (7) For an award to Plaintiff of such other and further relief as this court deems just and  
23 proper.

1 DATED: 9/12/2007

LAW OFFICES OF BOMARK-NOEL

Kjell C. Bomark-Noel

KJELL C. BOMARK-NOEL, ESQ.

Attorney for Plaintiff:

Elizabeth Santos

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VERIFICATION

I, ELIZABETH SANTOS, am a Plaintiff in the above-entitled action. I have read the foregoing "FIRST AMENDED COMPLAINT FOR DAMAGES" and know the contents thereof. Under penalty of perjury under the laws of California I affirm the above to be true and correct, to the best of my belief and recollection.

Executed in San Leandro, County of Alameda, State of California.

DATED: Sept 12, 2007



Elizabeth Santos  
Plaintiff

EXHIBIT A



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1515 Clay Street, Suite 701, Oakland, CA 94612

(510) 622-2941 TTY (800) 700-2320 Fax (510) 622-2951

[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

ARNOLD SCHWARZENEGGER, GOVERNOR



January 22, 2007

**ELIZABETH D. SANTOS**

433 Perkins, #209

Oakland, CA 94610

RE: E200607M0953-00-arc  
**SANTOS/SHIRLEY MACK**

Dear ELIZABETH D. SANTOS:

**NOTICE OF CASE CLOSURE**

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 17, 2007 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

2,

**EXHIBIT A<sub>2</sub>**

Notice of Case Closure  
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



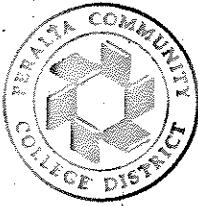
Allan H. Pederson  
District Administrator

cc: Case File

Shirley Mack, Librarian  
12500 Campus Drive  
Oakland, CA 94619

EXHIBIT A<sub>3</sub>

EXHIBIT B



# Peralta Community College District

353 East Eighth Street • Oakland, California 94606 • (510) 466-7200

January 22, 2007

SENT VIA U.S. MAIL and CERTIFIED, RETURN RECEIPT 7002 2030 0003 6233 6863

Elizabeth Santos  
433 Perkins Street, #209  
Oakland, CA 94610

Dear Ms. Santos:

This is to confirm that I met with you briefly on January 11, 2007, to discuss your concerns of harassment by Ms. Shirley Mack. At that time we scheduled another meeting with Ms. Mack, Hector Cordova, Ms. Mack's manager, you and myself to be held on Thursday, January 18, 2007. Due to Ms. Mack's unavailability on January 18<sup>th</sup>, the meeting was cancelled. Because I am unable to ensure Ms. Mack's attendance next week and to avoid a delay in addressing your allegations involving Ms. Mack, my office will not attempt to schedule another meeting but will instead pursue an investigation of your allegations against Ms. Mack.

Mr. Mark Paschal, a Peralta Community College District EEO investigation consultant, will be conducting this investigation and will be contacting you within the next day or two to schedule an investigative interview with you. Mr. Paschal will also interview Ms. Mack and any relevant witnesses related to this case.

Enclosed is my business card with my telephone number and email address. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Karen Ulrich".

Karen Ulrich  
Director of Employee Relations

Cc: Hector Cordova

EXHIBIT B



# Peralta Community College District

363 East Eighth Street • Oakland, California 94606 • (510) 466-7200

April 24, 2007

Elizabeth Santos  
433 Perkins Street, #209  
Oakland, CA 94610

**Subject: Investigation into Allegations of Harassment**

Dear Ms. Santos:

The District has concluded its investigation into allegations by you that you were harassed by Ms. Shirley Mack and that your rights were violated. Below are the findings and determinations from that investigation.

**GENERAL ALLEGATIONS:**

You allege that you have been subjected to harassment and violation of your rights, to include abuse of power and being bullied for about one year. You allege that the harassment was directed at you by District employee, Shirley Mack, and has taken place at Merritt College.

**SPECIFIC ALLEGATIONS:**

You allege that there were three specific incidents of harassment which are connected to the use of the Library computer, as follows.

1. You wrote that the first incident occurred on September 28, 2005. You wrote that you were e-mailing Mr. Grant (an instructor) regarding a midterm examination.
2. On October 5, 2005, you wrote that you were in the process of writing a note to your Legal Aspects Instructor and to Mr. Watts to notify them of an emergency absence.
3. On November 2, 2005, you wrote that you became most upset when respondent made you get up from a library computer and turn it off. You further wrote that you were working on a roster for your group project, connected with your Property Management class. According to you, respondent accused you of e-mailing something that was not

**EXHIBIT B<sub>2</sub>**

Page 2

Elizabeth Santos

related to your class project. You wrote that you were "mature enough not to violate the rules...I think of this as discrimination...I will file a lawsuit if this is not taken care of.

4. On November 8, 2005, you wrote that you walked into the library with the intention to review some information for your Legal Aspects class quizzes, and do some reading for your Appraisal class (chapter 12). You also wrote that you needed to send an e-mail to Instructor Forkner as per his instructions. You wrote that again respondent interfered with your legitimate use of library facilities. You wrote that at a later point you wanted to e-mail Mr. Forkner. The respondent began harassing you again stating that you were using the computer for personal use. You stated that you tried to explain that it was not personal use. You added that at that time the computer section had no users - "it was empty," you wrote. Respondent asked you to leave, reminding you that you must notify her (respondent) when e-mailing. You responded that you informed Noreen about your computer use. Respondent stated that Noreen is not a Librarian - she is a Librarian Technician. Respondent then made you repeat the words "do not use for personal e-mail," three times. You wrote that you refused to leave, you showed respondent (as you had before) that you were using the computer for school related matters. You wrote that due to the situation you were stressed emotionally and you sought out to complain to the administration. You went to the Q building and a secretary there told you to write a letter and return it to her.

#### **REVIEW OF DOCUMENTS SUBMITTED BY RESPONDENT:**

As part of the support documentation for her testimony, respondent submitted documents that were reviewed as part of this investigation.

#### **REPORT CONCLUSIONS:**

After a careful review of the facts and circumstances as noted above this investigation finds the following:

1. The evidence was insufficient to show that respondent physically bullied you, the complainant. There was no evidence to show that respondent raised her voice or touched or pushed you. The evidence shows that respondent confronted you in a normal tone in her efforts to enforce the library rules concerning your use of District computers.
2. The evidence revealed that respondent aggressively enforced the library use rules to a greater extent than that of her colleagues. In interviews, it was revealed that respondent maintained her own approach in the enforcement of these rules.

**EXHIBIT**

B<sub>3</sub>

Page 3  
Elizabeth Santos

3. Through interviews of witnesses it was determined that your subject use of the District computers was, in fact, for your classes and was thus legitimate.
4. The evidence shows that in spite of faculty and staff meetings that included Dean Hector Cordova, there was no agreement reached with respondent regarding insuring her enforcement of the computer use rules which were not consistent with the College's expectations in this regard.
5. The evidence shows that as a result of your frustration and feeling "picked on," you reacted by shouting at respondent and other library officials. There were written statements from students and Librarian Marianne who testified that you lost your temper in the library and would begin shouting at staff.
6. The evidence shows that Dean Cordova made reasonable attempts to meet with you in an effort to resolve the conflict. The Dean's efforts to meet with you were unsuccessful – after numerous attempts (six calls made to your home) you elected not to meet with the Dean.

The following are suggestions that could help resolve issues raised in this case. They are as follows:

*1. Investigation Findings: Although the library administration has established rules and guidelines regarding student use of computers, this investigation finds that there are no uniform guidelines for implementation of those rules. As a result respondent developed her own very aggressive approach that led to the conflict with complainant and ultimately the rest of the library staff.*

The administration should develop a single set of procedures to monitor student use of District computers in the Library. The administration should consider input from Librarians, Technicians, students etc. for the development of the procedure.

*2. Investigative Findings: This investigation found that there was no formal training program developed for new employees. Newly hired employees received training based on the librarian that was available. You, in this case had a conflict with a newly hired library technician that was trained by the respondent.*

The administration should develop training for new employees to ensure consistent monitoring of student use of equipment.

*3. Investigative Findings: After it was determined that your use of District computers was legitimate and appropriate, there was no administrative action taken to protect you from further overly aggressive enforcement by respondent.*

EXHIBIT B4

Page 4

Elizabeth Santos

The administration should take the appropriate steps to insure that respondent discontinues her current approach of enforcement of the Library's computer use policies, and trains her on an enforcement approach that is consistent with the District's expectations in this regard.

The administration should send a letter to you apologizing for the overaggressive approach by respondent and invite you back to utilize the library again. The letter should advise you that raising her voice and shouting at staff is not appropriate to resolve any conflicts that could arise. You should be advised to seek the appropriate District official if you have an issue with any of the library staff.

This concludes the investigation into this matter. If you have any questions or concerns, please feel free to contact me at (510) 466-7252.

Sincerely,



Karen Ulrich  
Director of Employee Relations

EXHIBIT B5



ALTERNATIVE DISPUTE RESOLUTION  
INFORMATION PACKAGE  
Effective April 15, 2005

**Instructions to Plaintiff / Cross-Complainant**

In all general civil cases filed in the trial courts after June 30, 2001, the plaintiff is required to serve a copy of this ADR information package on each defendant.

California Rules of Court, Rule 201.9 (Excerpt)

(a) Each court must make available to the plaintiff, at the time of filing of the complaint, an Alternative Dispute Resolution (ADR) information package that includes, at a minimum, all of the following:

- (1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes ...
- (2) Information about the ADR programs available in that court ...
- (3) In counties that are participating in the Dispute Resolution Programs Act (DRPA), information about the availability of local dispute resolution programs funded under the DRPA ...
- (4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) Court may make package available on Web site ...

(c) The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR information package on any new parties to the action along with the cross-complaint.

## GENERAL INFORMATION ABOUT ADR

### Introduction to Alternative Dispute Resolution

Did you know that most civil lawsuits settle without a trial? And did you know that there are a number of ways to resolve civil disputes without having to sue somebody? These alternatives to a lawsuit are known as alternative dispute resolution (also called ADR). The most common forms of ADR are mediation, arbitration, and neutral evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. In mediation, for example, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through court-connected and community dispute resolution programs and private neutrals.

### Advantages of Alternative Dispute Resolution

ADR can have a number of advantages over a lawsuit:

- ADR can be speedier. A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ADR can save money. Court costs, attorney fees, and expert witness fees can be saved.
- ADR can permit more participation. With ADR, the parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ADR can be flexible. The parties can choose the ADR process that is best for them.
- ADR can be cooperative. In mediation, for example, the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- ADR can reduce stress. There are fewer, if any, court appearances. And because ADR can be speedier, cheaper, and can create an atmosphere in which the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads. For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute instead of filing a lawsuit. Even when a lawsuit has been filed, ADR can be used before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

### Disadvantages of Alternative Dispute Resolution

ADR may not be suitable for every dispute.

If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure and review for legal error by an appellate court.

There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

The neutral may charge a fee for his or her services.

If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Lawsuits must be brought within specified periods of time, known as statutes of limitations. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

### Other Types of Alternative Dispute Resolution

There are several other types of ADR besides mediation, arbitration, and neutral evaluation. Some of these are conciliation, settlement conferences, fact-finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR methods. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are considering.

Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts that can be enforced by a judge.

You may wish to seek the advice of an attorney about your legal rights and other matters relating to the dispute.

### Help Finding an Alternative Dispute Resolution Provider in Your Community

To locate a dispute resolution program or private neutral in your community:

- Visit the Court's Web site. The Alameda County Superior Court maintains a list of court-connected mediators, neutral evaluators, and private arbitrators at <http://www.co.alameda.ca.us/courts/adr.htm>.
- Contact the Small Claims Court Legal Advisor. The small claims legal advisor for Alameda County is located at the Wiley W. Manuel Courthouse, Self-Help Center. The phone number is 510-268-7665.
- Visit the California Department of Consumer Affairs' Web site. The Department of Consumer Affairs (also called the DCA) has posted a list of conflict resolution programs throughout the state. The list can be found at [http://www.dca.ca.gov/r\\_r/mediati1.htm](http://www.dca.ca.gov/r_r/mediati1.htm).

You can also call the Department of Consumer Affairs, Consumer Information Center, at 800-952-5210.

- Contact your local bar association. You can find a list of local bar associations in California on the State Bar Web site at <http://www.calbar.org/2bar/2bar.htm>.

If you cannot find a bar association for your area on the State Bar Web site, check the yellow pages of your telephone book under "Associations."

Look in the yellow pages of your telephone book under "Arbitrators" or "Mediators."

**Automotive Repair, Smog Check:** The California Bureau of Automotive Repair (also known as BAR) offers a free mediation service for consumers who are dissatisfied with an auto repair or a smog check, or who dispute an invoice for such services. BAR registers and regulates California automotive repair facilities and licenses smog, lamp, and brake inspection stations. Learn more at <http://smogcheck.ca.gov/smogweb/geninfo/otherinfo/mediation.htm> or call 800-952-5210.

- **Attorney Fees:** The State Bar of California administers a mandatory fee arbitration program to resolve attorney fee disputes between lawyers and their clients. The program is an informal, low-cost forum and is mandatory for a lawyer if a client requests it. Mediation of attorney fees disputes may also be available in some areas of California. Learn more at <http://www.calbar.org/2bar/3arb/3arbndx.htm> or call 415-538-2020.

## DISPUTE RESOLUTION PROGRAMS IN ALAMEDA COUNTY

### Mediation Services

222278 Redwood Road, Castro Valley, CA 94546

Phone: (510) 733-4940 fax: (510) 733-4945

Provides a panel of mediators to assist in the process of reaching an agreement in the areas of Neighborhood Disputes, Child Custody, Divorce, Parent/Teen Conflicts, Home Owners Association, Business, Real Estate, Employer/Employee, and Fremont Rent Increases.

### East Bay Community Mediation

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Phone: (510) 548-2377 fax: (510) 548-4051

EBCM is a community-based mediation program created by the union of Berkeley Dispute Resolution Service and Conciliation Forums of Oakland. EBCM offers counseling on options and approaches to resolving a dispute, mediation, large-group conflict facilitation, and conflict resolution skills workshops.

### Catholic Charities of the East Bay: Oakland - Main Office

433 Jefferson Street, Oakland, CA 94607

Phone: (510) 768-3100 fax: (510) 451-6998

Mediators are responsible for mediation sessions involving the youth, victim and family members to work towards a mutually agreeable restitution agreement. Also provide free workshops in anger management and mediation.

### Center for Community Dispute Settlement

1789 Barcelona Street, Livermore, CA 94550

Phone: (925) 373-1035

Provides services in Tri-Valley for all of Alameda County. Program goals are to increase the number of court cases resolved, mediating small claims cases four days per week, and training youth in listening and conflict resolution skills.

### California Lawyers for the Arts: Oakland Office

1212 Broadway Street, Suite 837, Oakland, CA 94612

Phone: (510) 444-6351 fax: (510) 444-6352

This program increases the resolution of arts related disputes such as artistic control, ownership of intellectual property, credit for work performed or produced and contract issues, through the use of alternative dispute resolution. It also increases the capacity to provide services for counseling, conciliation and administration of mediation, arbitration and meeting facilitation.

**ALAMEDA COUNTY SUPERIOR COURT  
ADR PROGRAM**

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**ADR Program Administrator**

Pursuant to California Rule of Court 1580.3, the presiding judge of the Superior Court of California, County of Alameda has designated Benjamin D. Stough, Berkeley Trial Court Administrator, to serve as ADR program administrator.

A Plaintiff may elect, the parties may stipulate or a judge may refer a case to Judicial Arbitration. The Judicial Arbitration Program Coordinator may be contacted at (510) 670-6646.

**The Judicial Arbitration Process**

**Appointment of Arbitrator (must be appointed within 30 days after referral per CRC 1605)**

- ⇒ Parties mailed list of five names from which to select. (List mailed within 5-10 business days after receipt of referral).
- ⇒ Each party may reject one of the names listed (10 calendar days per CRC 1605a)
- ⇒ The administrator randomly appoints the arbitrators from the names remaining on the list. If only one remains then is deemed appointed.

**Assignment of Case (CRC 1605a(4))**

- ⇒ Within 15 days of notice of the appointment, the arbitrator shall contact parties in writing about time, date and place of the hearing. The parties shall receive at least 30 days notice prior to the hearing.

**Hearings (CRC 1611)**

- ⇒ Shall be scheduled so as to be completed not less than 35 days nor more than 90 days from the date the arbitrator was assigned. For good cause shown, the case may be continued an additional 90 days by the Case Management Judge.

**Award of Arbitrator (CRC 1615b & c)**

- ⇒ Arbitrator must file an award within 10 days after conclusion of the arbitration hearing. The court may allow 20 additional days upon application of arbitrator in cases of unusual length or complexity.
- ⇒ Within 30 days of the filing of the award the parties may file a Request for Trial de Novo. The clerk shall enter the award as a judgment after 30 days provided a Trial de Novo has not been filed.

**Return of Case to Court**

- ⇒ Upon Filing of Trial de Novo the action is returned to Case Management Judge for further proceedings. (CRC 1616 & Local Rule 6.4)
- ⇒ If Trial de Novo is not filed then judgment is entered and the Case Management Judge is notified (CRC 1615c & Local Rule 6.6)
- ⇒ If parties indicate a settlement then case is returned to Case Management Judge and case is continued 45 days for an Order to Show Cause RE filing a dismissal. (Local Rule 6.6)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

<input type="checkbox"/> Allen E. Burrsard Justice Center 600 Washington Street, Oakland, CA 94707	<input type="checkbox"/> Berkeley Courthouse 2000 Cerise Street, 2nd Fl., Berkeley, CA 94704	<input type="checkbox"/> George E. McDonald Hall of Justice 2283 Shoreline Drive, Alameda, CA 94501
<input type="checkbox"/> Fremont Hall of Justice 38439 Paseo Padre Parkway, Fremont, CA 94538	<input type="checkbox"/> Gallo/Schepone Hall of Justice 5572 Stoneridge Drive, Pleasanton, CA 94588	<input type="checkbox"/> Wiley W. Manuel Courthouse 661 Washington Street, Oakland, CA 94607
<input type="checkbox"/> Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	<input type="checkbox"/> René C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	

Case No.: \_\_\_\_\_

Plaintiff  
vs.

Defendant

**STIPULATION FOR ALTERNATIVE  
DISPUTE RESOLUTION (ADR)**

The parties by and through their attorneys of record hereby stipulate to submit the within controversy to the following Alternative Dispute Resolution process:

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**ORDER**

The foregoing stipulation having been read and considered, and good cause appearing, now therefore,

**IT IS SO ORDERED.**

**IT IS FURTHER ORDERED** that the matter be set for Order to Show Cause Hearing RE:

Dismissal on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in Department \_\_\_\_\_

Dated: \_\_\_\_\_

**JUDGE OF THE SUPERIOR COURT**

(SEAL)

1 Kjell C. Bomark-Noel, Esq. (SBN 147494)  
2 LAW OFFICES OF BOMARK-NOEL  
3 1124 East 14<sup>th</sup> Street, Suite B  
San Leandro, California 94577  
(510) 352-1030

4 Attorney for Plaintiff:  
Elizabeth Santos

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7 SUPERIOR COURT OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9 UNLIMITED JURISDICTION

10

11 ELIZABETH SANTOS Case No: HG07335828

12 Plaintiff,  
v.  
13 SHIRLEY MACK, MERRITT COLLEGE  
14 and DOES 1 through 10, inclusive

15 Defendants.

16 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

17 NOTICE IS HEREBY GIVEN that commencing on Monday, September 17, 2007, and  
18 continuing through Wednesday October 17, 2007, and also Saturday October 27, 2007  
19 continuing through Sunday November 4, 2007, KJELL C. BOMARK-NOEL of Law Offices of  
20 Bomark-Noel, the attorney of record for the Plaintiff, in the above captioned action, will be  
21 absent from his office and unavailable for any purpose whatsoever in the above captioned action,  
22 including but not limited to receiving notices of any kind, responding to any kind of notices,  
23 *ex parte* applications, responding to motions, appearing in Court, appearing at arbitration and/or  
24 responding to discovery. Kjell C. Bomark-Noel will be out of the state, and on Military orders  
25 for part of this period. Attorney Brian Ross will be available on an emergency basis, however do  
26 not schedule anything in these time periods. Brian Ross can be reached at (510) 483-3900, if you  
27 must contact him, please be specific about the case, parties and issue.

28

1 NOTICE IS HEREBY FURTHER GIVEN that intentional scheduling of any of the  
2 above during said time period will result in a request for sanctions pursuant to the provisions of  
3 Code of Civil Procedure Section 128.5 and the holding in *Tenderloin Housing Clinic, Inc vs.*  
4 *Sparks* (1992) 8 Cal.App.4th299, 10 Cal.Rptr.2d371.

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6 Dated: September 14, 2007  
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Kjell C. Bomark-Noel, Esq.  
Attorney at Law

1 RE: Santos v. Merritt College et al.  
 2 Alameda County Superior Court Case No. HG07335828

3 PROOF OF SERVICE

4 I am employed in the County of Alameda, State of California. I am over the age of eighteen  
 5 years and not a party to the within action. My business address is Law Offices of Bomark-Noel, 1124  
 6 East 14<sup>th</sup> Street, Suite B, San Leandro, California 94577.

7 On the below date I served the attached:

8 NOTICE OF UNAVAILABILITY OF COUNSEL

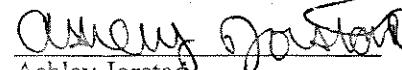
9 in the matter of Santos v. Merritt College et al. on the parties to this action by placing a true copy  
 10 thereof in a sealed envelope, addressed as follows:

11 Stephanie B. Bradshaw, Esq. 12 Gordon & Rees LLP 13 275 Battery St 20FL 14 San Francisco, CA 94111	15 <i>Attorney for Defendant</i>
----------------------------------------------------------------------------------------------------------------	----------------------------------

- 16 [X] BY MAIL I caused such envelope to be delivered through the United States Postal  
 17 Service by putting in an envelope and sending to the addressee noted above.
- 18 [ ] BY FAXSIMILE I caused the said document to be transmitted by facsimile machine  
 19 to the number indicated after the address noted above.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
 21 true and correct.

22 Executed on September 13, 2007 in San Leandro, California.

23  
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 29 Ashley Jorstad  
 30 Secretary for Kjell C. Bomark-Noel

PROOF OF SERVICE